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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,708	03/09/2004	Gary Lee Knirk	60,137-242; 118-3004-U	2929

26096 7590 02/27/2006

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EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 02/27/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/796,708
Filing Date: March 09, 2004
Appellant(s): KNIRK ET AL.

MAILED

FEB 27 2006

Group 3700

Theodore W. Olds
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/02/2006 appealing from the Office action mailed 09/02/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 10/31/2005 has not been entered because the amendment after final was submitted, including the amended language, seeking only to address the cited prior art rejections not the 35 USC 112, second paragraph rejections (see applicant's remark section in the amendment after final).

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 USC 103 rejection of claims 1, 4, and 5 as being unpatentable over US Patent 6,038,714 to Guenther is withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

872,689	Sarkisian	12/03/1907
6,038,714	Guenther	03/21/2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the recitation "said holes" lack antecedent basis. Claim 4 depends on claim 1 and is likewise indefinite.

Regarding claim 5, it is unclear what structure limitations applicant intends to cover when claim 5 calls for "said at least three of said tabs each including holes". As best understood from the specification, each of the tabs has a hole for receiving a fastener. Therefore, the recitation "said at least three of said tabs each including holes" render the claim indefinite since the mete and bound of such claimed subject matter cannot be ascertain.

2. Claims 1, 4 and 5, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarkisian (872689) in view of Guenther (6038714).

Regarding claim 1, the Sarkisian reference discloses a support bar. The bar includes a hollow thin wall bar (Fig. 1) having central portion (about a, a') and a pair of ends (at b) bent away from the central portion. The bar also includes an integral mounting flange (the portion the attached the bar to the wall W) for each of said ends, wherein each of said mounting flanges having a plurality of tabs extending outwardly (at b'). The tabs include holes for receiving fasteners (at 2).

Even though the Sarkisian device includes several parts i.e. the bar with ends (at b), they are secured together as a single unit; constituent parts are so combined as to constitute a unitary whole, which is "integral" within meaning of claim; "integral" is not limited to a fabrication of parts from a single piece of metal, but is inclusive of other means for maintaining parts fixed together as a single unit. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sarkisian reference by having the ends formed integrally with the central portion of the bar because the use of one-piece construction instead of reference structure is matter of obvious engineering choice.

Furthermore, even though the Sarkisian device does not specifically show at least three tabs as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sarkisian reference by employing at least three tabs with holes for receiving the fasteners.

Such modification would be well within a general knowledge of one skilled person in the art in order to provide additional mounting structures, by forming additional tabs (2, 3 or 4), to allow for greater support and stability against different directional motion and force.

The Sarkisian reference also DIFFERS in that it does not specifically include covers as claimed. Attention, however, is directed to the Guenther reference which discloses a similar support bar (Fig. 1) having covers (at 18, 20) for covering the mounting flanges. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sarkisian reference by employing covers, in view of the teaching of Guenther, to provide an attractive appearance and to conceal from view the fasteners that hold the bar to the wall.

Regarding claim 4, as schematically shown in Figure 1 of Sarkisian, the tube is cylindrical.

Claim 5 recites limitations that are substantially similar to the limitations recited in claim 1 which has been rejected as discussed supra.

(10) Response to Argument

Applicant asserts that the 35 USC 112, 2nd paragraph rejection is improper (argument section, page 3, paragraph A). The examiner disagrees. As stated in the above rejection, the recitation "said holes" lacks antecedent basis since claim 1 does not call for "holes" or "a plurality of holes". Even though in the arguments section applicant has stated that "the claim is definite in requiring three tabs, each tab including

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a hole", such assertions are not persuasive because (a) the claimed limitation in claim 1 does not call for "three tabs, each including a hole" and (b) applicant, in the instant written specification, fails to disclose that each tab only has one hole. Applicant also asserts that "appellant has attempted to amend (after final) the claim..." but the entry of the amendment after final has been refused. Once again, the amendment after final did not defined three tabs, each tab including a hole as set forth in applicant arguments (see the amendment after final filed on 10/31/05). Applicant, in the amendment after final, merely changes the limitation "said holes" to "each said hole" and expects the claim to be construed as a claim requiring three tabs, each tab including a hole.

Claim 5 suffers similar deficiency since the claim recites the limitation of each (tab) including holes. Such recitation does not have any clear support from the instant specification.

Note, if the application would to be further prosecuted, it is recommended that claim 1 should be amended to positively recite the limitations of three tabs, each including a hole, and also the written specification should be amended to provide antecedent basis for the claimed subject matter in the claim.

Applicant also asserts that Sarkisian does not meet the basis structural limitation require by the claim (argument section, page 5, paragraph C) in that the Sarkisian rod has two tabs, not three. The examiner disagrees. Even though the Sarkisian device does not specifically show three tabs, to have modified the Sarkisian rod by employing at least three tabs with holes for receiving the fasteners would be well within a general knowledge of one skilled person in the art in order to provide additional mounting

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structures (2, 3 or 4), by forming additional tabs, to allow for greater support and stability, i.e. sideways movement of the rod. In addition, the mounting surface (the wall), in this instant, does not carry any patentable weight because the modified Sarkisian device is capable being mounted on any surface if so desired. Therefore, the modified Sarkisian reference does teach applicant's invention as claimed.

Applicant also asserts that the combination of Sarkisian and Guenther is improper there is no benefit to including a cover (argument section, page 5, paragraph C). The examiner disagrees. Again, as stated in the above rejection, it is well within a general knowledge to one of ordinary skill in the art to modify the Sarkisian reference by employing covers, as taught by Guenther, to provide an attractive appearance, to conceal from view the fasteners that hold the bar to the wall and possibly prevent fasteners from damaging the edge of the curtain when the edge of the curtain comes in contact with the protruding heads of the fasteners. Therefore, the combination of Sarkisian and Guenther does suggest the invention as claimed.

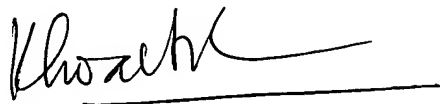
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

In conclusion, consideration of the factual evidence supporting a determination of non-patentable subject matter as discussed above renders appellant's arguments unpersuasive.

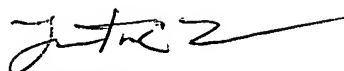
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Khoa Huynh

Conferees:



Justine Yu

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